



ADR Newsletter

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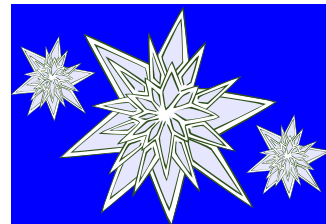
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B.J. Ocker -Editor

Three Types of Tough Negotiators

Written by: Roger Volkema
The Negotiation Toolkit
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With regard to tough negotiators, I have concluded that there are three types of individuals who fall into this category.

The Faux Toughie

This person is crying out for friendship but is afraid of losing control. He is afraid of being found out, of losing respect or being taken advantage of. The only real danger in dealing with the faux toughie is in not recognizing her for what she is, and presuming that this person is a hard-core toughie and avoiding her. In negotiating with the faux toughie, there are really two negotiations. The first involves negotiating his public identity. Recognize what the faux toughie wants (respect) and give it to him . . . You may even want to show a little toughness (competitiveness) yourself, and then back off, as a way of affirming the other party's desired public identity. Generally, faux toughies like this give-and-take. Then, by lowering your voice (perhaps to the level of a private conversation) and explaining the situation and your needs (which may also be the faux toughie's needs), you are likely to get what you want. This is the second negotiation, which is substantive rather than psychological.

The Provoked Toughie

The provoked toughie, as the adjective suggests, is around by situational factors. It could be that this person has just had a bad day, and something pushes her past the threshold of accommodative or collaborative behavior . . . We all have a tolerance level, a threshold, although some of us are more quickly provoked than others. This type of toughie also can become aggressive when personally held principles are threatened or breached. The way to deal with the provoked toughie is to avoid, if possible, those things that might provoke her, or if she has already been provoked, to address her immediate concerns. If timing and energy are the concerns (a bad day at the office, the kids are driving me nuts, I've got a ton of work to do today), negotiate another day or time that is better for all parties to focus on the substantive issues. If personally held principles are the concern (for example, work comes before play), address those up front. It is only after the provoked toughie's immediate concerns have been dealt with that she is able to address your immediate concerns.

The Hard-Core Toughie

This type of toughie is frustrating, and in some cases dangerous. Often they are hard to detect, since their modus operandi varies. By giving the appearance that they are friendly and supportive, for example, the hard-core toughie can lure you into letting down your guard and revealing important information about your style or position. By overwhelming you initially with assertiveness or aggressions, they test your limits and establish their dominance. Once you have been measured, they can afford to appear passive and cooperative as they pursue their ends. Learning all you can about the style and reputation of a negotiating counterpart prior to engaging an individual is always a good idea in an important negotiation, but particularly if the individual is a toughie. If you choose to negotiate with a known hard-core toughie, consider first negotiating the process whereby you are to negotiate. Insist on fair principles, uninterrupted statements, active listening, and no abusive language or shouting. Many hard-core toughies, however, are not good at responding to (let alone using) such behaviors. Therefore, do not be surprised if a hard-core toughie tries to change the tenor of a negotiation through accusations, outbursts, threats, etc., particularly if he is not getting his way. Refuse to become a victim, and don't fall into the trap of trying to beat the hard-core toughie at his own game. He expects you to cave in to his antics and demands, or to become defensive, resist, and counterattack. Rather than play to his strength, ignore his behavior and ask open-ended questions, listen, summarize, and point out areas of common interest, all the while staying focused on what you want. Try to think as a third-party mediator, searching for the other party's needs and interests (among which is to maintain his pride and honor). How can you help or hurt him? Seek ways to help the hard-core toughie feel safer, and statements or proposals to which he can say yes. If the outbursts and abuse continue despite your attempts to ignore or redirect them, reassert the principles under which you will continue negotiating, and the potential consequences of terminating discussions. Occasionally you encounter a truly hard-core toughie with whom these behaviors have little or no apparent effect, someone only interested in his self-interest and winning, generally at the expense of others.

Unfortunately, there may be circumstances where you feel that avoiding or withdrawing is not possible because you are socially bound to a hard-core toughie. If this person is your direct supervisor (and you need the job) or a relative (father, daughter, husband, wife), you may not have a quick and easy alternative to withdrawing from him or her. In such cases, negotiation is sure to require greater influence or pressure that you alone can exert. Keep in mind, however, that changing someone's style is a long shot, and the few truly hard-core toughies to experience an epiphany were for the most part fictional characters.

Looking for ADR resources?

The Free Mediation Course provides those that enroll the opportunity to complete training that could lead to a certificate (for a fee). The course itself is free and may be a good refresher. The course has been certified for MCLE credit in the State of California.

For more information go to: <http://www.freemediationcourse.com>

PLEASE NOTE: Providing this information does not constitute an endorsement from The Office of Resolution Management.

What Would You Do?

~B.J. Ocker, ADR Specialist

No matter how many times or types of disputes a mediator may have been involved with, it is common to be surprised with something new! In this section of the newsletter, I will share a scenario for your review. After reading the example, reflect on how you would handle it.

I will collect answers from the readers and share them in the next issue.

Please consider the following scenario:

You are co-mediating between a corporate manager and his former employer in a lawsuit for breach of contract, and civil rights violations. The plaintiff is a minority, and a single mother who was dismissed after several disagreements with her supervisor. She is represented by a young lawyer recently admitted to the bar.

The other co-mediator, having just mediated a similar suit, is aware of a recent case in the same jurisdiction that strengthens the plaintiff's case substantially. She strongly suspects that the plaintiff and her attorney do not know of this case.

Following the joint session, the co-mediators huddle and she mentions the case to you and asks whether she should say anything to either or both parties or their counsel.

What Would You Do?

You may send an e-mail with your response to William.Ocker@va.gov

ORM & ADR Web sites:

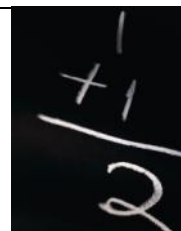
The Office of Resolution Management web site is an excellent dispute resolution resource for employees, mediators, and program managers. Below are some quick links to share with others seeking more information on dispute resolution, training, and services provided by ORM.

- ♦ Workplace ADR- <http://vaww.va.gov/adr/workplaceADR.asp>
- ♦ Previous Newsletters- <http://vaww.va.gov/adr/Newsletter.asp>
- ♦ Certified Neutrals List- <http://vaww.va.gov/adr/docs/CertifiedNeutralsList.pdf>
- ♦ Training Links- <http://vaww.va.gov/adr/Training.asp>
- ♦ VACO ADR- <http://vaww.va.gov/adr/ADR4VACO.asp>
- ♦ Confidentiality and ADR- <http://vaww.va.gov/adr/ConfNADR.asp>

Class is in Session!

~Gregory Burke, ORM Ombudsman

Mediation Requests



Q. What should a mediator do when the parties each request the mediator to provide a summary of the discussions that went on during the mediation at the end of the initial session, before an agreement is reached, or the mediation is ended?

A. Typically mediators are asked only to assist the parties prepare written agreements and are not asked to prepare other documents whether to be shared by the parties or provided to one party. However, the mediator's role is to assist the parties reach a better understanding of their respective positions and an agreement if possible. Consequently, no per se prohibition exists to preparing written statements for the parties. However, context should be carefully considered.

If the parties have ended an initial mediation session without agreement but with the understanding that another session will be scheduled, then a written statement of what has occurred during the session would be helpful in assuring that the parties do not misunderstand information shared and progress made in the first session and expectations going into the next session, to include any tasks that must be completed prior to reconvening. The mediator is still serving as a neutral and any document he prepares would still be confidential.

Similarly, if the parties ask the mediator to prepare a summary of the parties' issues in advance of actually crafting an agreement, the mediator would still be operating confidentially in assisting the parties and drafting any working papers to assist in preparing the agreement. The need to prepare working papers, or any request to do so, should occur only in very limited circumstances and complex negotiations.

On the other hand, if the mediation has ended without the parties reaching agreement and there is little likelihood of it being reconvened, the mediator's role as a neutral has essentially ended. Once the role of the mediator has ended, the mediator's communications with either party is no longer protected by confidentiality and any papers prepared by the mediator are subject to discovery. The mediator may also be called to testify concerning any discussions with the parties.

DID YOU KNOW...

Black History Month– February

Black History Month is a federally recognized, nation-wide celebration during the month of February. The celebration provides an opportunity for all Americans to reflect upon the many contributions of the millions of African Americans.

In 1926, the noted African American historian, Carter G. Woodson, initiated "Negro History Week" to increase public awareness and appreciation of the significant role African Americans played in the shaping of our country. He chose February for the observance because February twelfth was Abraham Lincoln's birthday and February fourteenth was the accepted birthday of Frederick Douglass.

In 1976, during the bicentennial celebration of our country, Negro History Week expanded into Black History Month and what is sometimes referred to as African American Heritage Month.

Women's History Month– March

In 1979, Molly Murphy MacGregor, then the Director of the Sonoma County Commission on the Status of Women, was invited to a Women's History Institute at Sarah Lawrence College to discuss the importance of using Women's History Week as a focal celebration to recognize and celebrate women's historic accomplishments. They agreed to work toward securing an official Congressional Resolution that would declare the week of March 8th as "National Women's History Week."

In March of 1980, President Jimmy Carter issued a Presidential Message to the American people, encouraging the recognition and celebration of women's historic accomplishments during the week of March 8th, Women's History Week. By the end of 1980, then Representative Barbara Mikulski (D-MD) and Senator Orrin Hatch (R-UT) had co-sponsored the first Joint Congressional Resolution that declared the week of March 8th in 1981 as National Women's History Week.

In 1987, at the request of women's organizations, museums, libraries, youth leaders, and educators throughout the country, the National Women's History Project successfully petitioned Congress to expand the national celebrations to the entire month of March. A National Women's History Month Resolution was quickly approved with strong bipartisan support in both the House and Senate. Since 1992, a Presidential Proclamation has carried the directive for what is now a major national and international celebration.





Workplace ADR Program

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Mediation:

A Solution to Workplace Disputes



The Workplace ADR Program solicits articles for VA's quarterly ADR newsletter. The purposes of the newsletter are to communicate information relating to the use of ADR in workplace disputes, and to serve as a resource for those interested in learning more about ADR and its application within VA.

We invite you to submit ideas and articles for the newsletter through your respective administrations:

- ♦ VHA to Sherron Jernigan (10A2E),
- ♦ VBA to Johnny Logan (20M42),
- ♦ NCA to Nicole Maldon (40A),
- ♦ VACO staff offices to your VACO ADR Liaison,
- ♦ Labor organizations to your ADR Council Representative.

We are looking for ideas and articles on ADR related topics, noteworthy activities, initiatives, accomplishments, best practices, or other items designed to educate and inform VA employees and managers on ADR and its benefits in addressing workplace disputes. We hope the VA community will find the newsletters a useful resource for obtaining interesting and helpful information representing ADR activity throughout VA.

For more information, visit our website:
<http://vaww.va.gov/adr/>



Core Values "I CARE"

Integrity

Commitment

Advocacy

Respect

Excellence